

**SOAR
Commercial
End User License Agreement (EULA)
License Number:**

This License Agreement, effective on the date of last signature hereto, is by and between Sandia Corporation, (hereinafter SANDIA) a corporation having a place of business located in Albuquerque, New Mexico and LICENSEE (as specified in Exhibit 1 of this License Agreement).

Background

WHEREAS, SANDIA manages and operates a federally-owned facility known as Sandia National Laboratories for the United States Department of Energy (hereinafter DOE) under contract DE-AC04-94AL85000 (hereinafter DOE CONTRACT);

WHEREAS, SANDIA has developed and acquired, and may further develop and acquire, SANDIA SOFTWARE (as defined herein), and SANDIA is, and may further become, the assignee of SANDIA SOFTWARE;

WHEREAS, LICENSEE desires to obtain from SANDIA, and SANDIA is willing to make available to LICENSEE, a license to SANDIA SOFTWARE in accordance with the terms and conditions set forth herein;

WHEREAS, SANDIA has either been granted or will request permission to assert copyright for SANDIA SOFTWARE. Under the terms of the permission, the United States Government reserves a nonexclusive license in SANDIA SOFTWARE for use by or on behalf of the United States Government;

WHEREAS, SANDIA desires to license SANDIA SOFTWARE in support of technology transfer to United States industries to enhance the United States' competitiveness and in support of other Programmatic Objectives as identified in Exhibit 2 of this License Agreement; and

WHEREAS, the United States Government is neither a party to nor assumes any liability for activities of SANDIA in connection with this License Agreement;

NOW, THEREFORE, in consideration of the agreement of the respective PARTIES (as defined herein) hereto, and for the faithful performance of this License Agreement, it is hereby agreed as follows:

Article I: Definitions

- 1.1 SANDIA and LICENSEE shall have the meanings set forth above, and each may be referred to herein as a PARTY or, collectively, as PARTIES to this License Agreement.
- 1.2 DERIVATIVE WORK shall mean any work of authorship that is based on one or more existing work(s) of authorship, and includes any revision, modification, translation, abridgment, condensation, expansion, enhancement, collection, compilation or any other form in which the work of authorship may be recast, transformed or adopted.
- 1.3 SANDIA SOFTWARE shall mean:
 - 1.3.1 the computer program(s) listed in Exhibit 4 of this License Agreement; and
 - 1.3.2 the technical information and data relating to the computer program(s) listed in Exhibit 4 of this License Agreement.

The term SANDIA SOFTWARE shall not include technical information or data acquired from third parties that are subject to nondisclosure restrictions or that require accounting to third parties.

- 1.4 TECHNICAL ASSISTANCE shall mean support for installation of, run-time assistance for, and support for use of SANDIA SOFTWARE. Such TECHNICAL ASSISTANCE shall be limited to telephone support during normal SANDIA business hours and shall be available on a not-to-interfere basis. Such TECHNICAL ASSISTANCE shall reflect full cost recovery to SANDIA, and shall not exceed the amount reflected in Exhibit 8 of this License Agreement, at SANDIA'S applicable labor rates. Such TECHNICAL ASSISTANCE shall be available for up to the period reflected in Exhibit 8 of this License Agreement starting from the execution date of this License Agreement. TECHNICAL ASSISTANCE will not commence until the funds for such TECHNICAL ASSISTANCE, as specified in Exhibit 7 of this License Agreement, are received by SANDIA at the address specified in Article V of this License Agreement. Any unspent TECHNICAL ASSISTANCE funds after the period reflected in Exhibit 8 of this License Agreement shall be accounted for according to SANDIA'S internal license fee and royalty policies.
- 1.5 GOVERNMENT shall mean the government of the United States of America and agencies thereof.
- 1.6 DOE shall mean the United States Department of Energy, an agency of the GOVERNMENT.

Article II: Grant of License and Ownership

- 2.1 Subject to the terms and conditions of this License Agreement and to the extent of its rights, SANDIA hereby grants LICENSEE a non-exclusive, nontransferable, right and license to:
 - 2.1.1 use SANDIA SOFTWARE internally to the extent set forth in Exhibit 6;
 - 2.1.2 internally perform and display SANDIA SOFTWARE to the extent set forth in Exhibit 6; and
 - 2.1.3 reproduce SANDIA SOFTWARE only as necessary for exercise of the rights granted herein.
- 2.2 SANDIA SOFTWARE is licensed, not sold to LICENSEE. SANDIA shall retain ownership of SANDIA SOFTWARE at all times. No ownership interest in SANDIA SOFTWARE is transferred to LICENSEE under this License Agreement.
- 2.3 SANDIA reserves the right to use SANDIA SOFTWARE to make software or products for use by SANDIA and for work on behalf of third parties, for sale to third parties, and for distribution to third parties.
- 2.4 Express or implied rights outside the scope of Article II are expressly excluded.

Article III: Duties of the Parties

- 3.1 Within thirty (30) days of the effective date of this License Agreement, SANDIA shall make the existing SANDIA SOFTWARE available to LICENSEE. SANDIA SOFTWARE shall be delivered to LICENSEE at the address specified in Article IX of this License Agreement.

- 3.2 SANDIA may at SANDIA'S sole discretion, deliver updates, modifications, or bug fixes to LICENSEE. SANDIA is under no obligation to make or deliver such updates, modifications, or bug fixes.
- 3.3 SANDIA does not provide TECHNICAL ASSISTANCE under this License Agreement as reflected in Exhibit 8 of this License Agreement.
- 3.4 LICENSEE agrees not to remove copyright notices, markings or otherwise modify SANDIA SOFTWARE and to provide attribution to SANDIA according to Exhibit 9 of this License Agreement.
- 3.5 LICENSEE agrees to abide by the Special Provisions in Exhibit 10 of this License Agreement.
- 3.6 The DOE may require SANDIA to report on the utilization or the effect of obtaining SANDIA SOFTWARE in the commercial marketplace. In this regard, LICENSEE agrees to reasonably cooperate with and assist Sandia in making all such reports.

Article IV: License Fees

- 4.1 In consideration of SANDIA granting the rights and licenses under Article II of this License Agreement, LICENSEE agrees to pay to SANDIA nonrefundable fees in accordance with the terms of this License Agreement and in the amounts set forth in Exhibit 7 of this License Agreement. Such license fee includes the cost of TECHNICAL ASSISTANCE, if any, as specified in Exhibit 8 of this License Agreement.

Article V: Statements and Payments

- 5.1 All fees payable by LICENSEE hereunder shall be paid to SANDIA at its address specified in Article IX hereof in United States of America dollars in the total amounts provided for in Exhibit 7 of this License Agreement.
- 5.2 Any taxes, assessments, or charges assessed or imposed by an entity or government other than by the GOVERNMENT or any state or local government in the United States of America, which SANDIA or LICENSEE or any other party shall be required to pay with respect to such fee shall be borne by LICENSEE.

Article VI: Nondisclosure

- 6.1 To the extent SANDIA SOFTWARE is provided to LICENSEE in source code, LICENSEE shall treat all SANDIA SOFTWARE as confidential. LICENSEE further agrees not to disclose SANDIA SOFTWARE to third parties, except as provided for in Paragraphs 6.3 and 6.4 of this License Agreement. LICENSEE agrees to use SANDIA SOFTWARE, only to the extent necessary, for the enjoyment of LICENSEE's right and license granted under this License Agreement.
- 6.2 To the extent SANDIA SOFTWARE is provided to LICENSEE in object code, LICENSEE agrees not to disassemble, decompile or otherwise reverse-engineer SANDIA SOFTWARE.
- 6.3 LICENSEE shall limit access to SANDIA SOFTWARE, and may disclose SANDIA SOFTWARE to only those employees and contractors who require access for LICENSEE's enjoyment of its right and license under this License Agreement. LICENSEE shall ensure that such employees and contractors are obligated to treat SANDIA SOFTWARE as confidential in the same manner and to an equivalent extent as LICENSEE is required to treat SANDIA SOFTWARE as confidential under this License Agreement. LICENSEE obligations of nondisclosure under this License Agreement shall continue for five (5) years after termination of LICENSEE's rights under this License Agreement.
- 6.4 This License Agreement does not restrict or impair the right of LICENSEE to use, disclose or otherwise deal with any part of technical information or data which

- 6.4.1 is or becomes generally available to the public through no wrongful act of LICENSEE ;
- 6.4.2 was in the possession of LICENSEE prior to the time SANDIA SOFTWARE was acquired by LICENSEE , and was not acquired directly or indirectly from SANDIA or from others under an obligation of confidentiality;
- 6.4.3 is independently made available to LICENSEE by a third party without the legal obligation of secrecy, provided the third party did not acquire it directly or indirectly from SANDIA; or
- 6.4.4 is independently developed by LICENSEE through employees who did not have access to the SANDIA SOFTWARE.

Article VII: Duration and Termination

- 7.1 SANDIA may terminate or reduce the rights and licenses granted LICENSEE under Article II of this License Agreement at its sole discretion, effective upon sixty (60) days written notice from SANDIA to LICENSEE, if LICENSEE at any time:
 - 7.1.1 defaults in the payment of any license fee, as set forth in Article IV of this License Agreement, due to SANDIA;
 - 7.1.2 commits any other material breach of this License Agreement and fails to remedy or cure the breach within sixty (60) days after SANDIA gives written notice to LICENSEE thereof; or
 - 7.1.3 makes any material misrepresentations of material facts relating to SANDIA or this License Agreement.
- 7.2 SANDIA may terminate or reduce the rights and licenses granted under Article II of this License Agreement at its sole discretion by giving written notice to LICENSEE in the event that LICENSEE experiences any of the following events: dissolution, insolvency; filing of a voluntary petition in bankruptcy (other than reorganization under Chapter 11); adjudication as a bankrupt pursuant to an involuntary petition; appointment by a court of a temporary or permanent receiver, trustee or custodian for its business; or an assignment for the benefit of creditors. This termination will become effective immediately upon SANDIA giving written notice to LICENSEE.
- 7.3 If rights and licenses granted to LICENSEE under this License Agreement are terminated in accordance with Article VII of this License Agreement, LICENSEE shall have no further right and license as listed under Article II of this License Agreement, and shall have no further right to receive or possess SANDIA SOFTWARE except as provided in Article VII of this License Agreement. Likewise, SANDIA's obligation to provide TECHNICAL ASSISTANCE, if any, under Article III of this License Agreement will cease upon termination of LICENSEE's rights under this License Agreement for any reason.
- 7.4 Article 3.6, Article VI, and Article VIII shall survive termination of this Agreement.

Article VIII: Warranty, Liability, and Indemnification

- 8.1 LICENSEE shall notify SANDIA of any known infringement of SANDIA SOFTWARE.
- 8.2 SANDIA makes no warranty, express or implied, as to the accuracy or utility of SANDIA SOFTWARE and that the use of any SANDIA SOFTWARE will not infringe any United States or foreign patents, copyrights, or intellectual property. SANDIA SOFTWARE is made available hereunder to LICENSEE on an "AS-IS" basis.
- 8.3 **EXCEPT FOR THE WARRANTIES EXPRESSLY PROVIDED HEREIN, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED**

WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED HEREUNDER.

- 8.4 Neither SANDIA, the GOVERNMENT, nor their agents, officers and employees shall be liable for any loss, damage (including, incidental, consequential and special), injury or other casualty of whatsoever kind, or by whomsoever caused, to the person or property of anyone, including LICENSEE, its successors, and assigns, arising out of or resulting from the licenses granted to LICENSEE herein, or the accuracy and validity of SANDIA SOFTWARE. LICENSEE agrees for itself, its successors and assigns, to defend SANDIA and to indemnify and hold each of SANDIA and the GOVERNMENT harmless from and against all claims, demands, liabilities, suits or actions (including all reasonable expenses and attorney's fees incurred by or imposed on SANDIA or the GOVERNMENT in connection therewith) for such loss, damage (including incidental, consequential and special), injury or other casualty.

If LICENSEE is a U.S. State, a U.S. state college or university, or a political subdivision of a U.S. State or agency thereof, and LICENSEE is limited by law from assuming such indemnification obligations, such obligations shall be assumed to the extent permitted by such U.S. State law, except that such obligations shall be assumed for any liability resulting from the negligent acts or omissions of LICENSEE.

- 8.5 The GOVERNMENT is neither a party to nor assumes any liability for activities of SANDIA in connection with this License Agreement;
- 8.6 The DOE is not a party to this License Agreement.
- 8.7 **NEITHER THE GOVERNMENT, THE DOE, NOR ANY OF THEIR EMPLOYEES, MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, OR USEFULNESS OF ANY INFORMATION, APPARATUS, PRODUCT, OR PROCESS DISCLOSED, OR REPRESENTS THAT ITS USE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS.**

Article IX: General Provisions

- 9.1 LICENSEE shall not, without the express written consent of SANDIA, make any verbal or written statements or perform any act indicating that Sandia endorses or approves, or has endorsed or approved, any LICENSEE product or service. LICENSEE shall, however, indicate that LICENSEE products or services related to this License Agreement are licensed under rights and licenses granted by SANDIA.
- 9.2 Nothing contained in this License Agreement shall be construed as conferring any right to use in advertising, publicity or other promotional activities any name, trade name, trademark or other designation of either PARTY hereto (including any contraction, abbreviation or simulation of any of the foregoing), except to the extent expressly permitted in Article IX and Exhibit 9 of this License Agreement. The use of the name "Sandia", "Sandia Corporation", "Sandia National Laboratories", the Sandia Thunderbird Logo, or any other Sandia mark is expressly prohibited, except as provided for in Article IX and Exhibit 9 of this License Agreement. Such use does not constitute an endorsement by SANDIA of LICENSEE or LICENSEE's products or services.
- 9.3 Notices under this License Agreement shall be sufficient if mailed by certified or registered mail, return receipt requested, if sent by facsimile, if personally delivered to the PARTIES or if deposited in a nationally recognized overnight carrier. Notices by mail shall be deemed received three days after being deposited in the U.S. mail, certified or return receipt requested or the third business day following the deposit of such notice in a nationally recognized overnight carrier.

Faxes shall be deemed received on the day following successful transmission when followed by written confirmation by U.S. mail, certified or return receipt requested or the third business day following the deposit of such notice in a nationally recognized overnight carrier, by the sender. Notices to the PARTIES as appropriate, shall be sent to the address of such PARTY specified in Article IX or Exhibit 1 of this License Agreement:

For Sandia

Statements and notices (Express mail, U.S. mail):

Sandia National Laboratories
Atten: Licensing Administration
Reference; Sandia License Number:
1515 Eubank SE
Mailstop 0114
Albuquerque, NM 87123
Telephone: (505) 844-4234
Facsimile: (505) 844-8011

Statements and notices (U.S. mail only):

Sandia National Laboratories
Atten: Licensing Administration
Reference; Sandia License Number:
P.O. Box 5800
Mailstop 0114
Albuquerque, NM 87185
Telephone: (505) 844-4234
Facsimile: (505) 844-8011

For Payments

Sandia National Laboratories
c/o Nations Bank
Reference; Sandia License Number:
P.O. Box 25848
Albuquerque, NM 87125

- 9.4 The waiver of a breach of this License Agreement or the failure of SANDIA or LICENSEE to exercise any right under this License Agreement shall in no event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this License Agreement.

Article X: Assignment

- 10.1 LICENSEE shall not assign this Agreement or any right granted nor delegate any duties under this Agreement without the prior written consent of SANDIA. However, LICENSEE may assign this Agreement to a successor in substantially all of the business of LICENSEE relating to the subject matter of this Agreement, subject to Article XIII of this License Agreement.

Article XI: U.S. Competitiveness

- 11.1 LICENSEE agrees that any design and development resulting from use of SANDIA SOFTWARE will be performed in the United States and that products resulting from use of SANDIA SOFTWARE will be substantially manufactured in the United States.

Article XII: Government Sponsorship

- 12.1 The GOVERNMENT is granted for itself and others acting on its behalf a paid-up, nonexclusive, nontransferable, irrevocable, worldwide license in SANDIA SOFTWARE to practice or have practiced for or on behalf of the GOVERNMENT.
- 12.2 For an initial period of five (5) years beginning on the date permission to assert copyright in SANDIA SOFTWARE was granted to SANDIA by

DOE, the GOVERNMENT is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable, worldwide license in SANDIA SOFTWARE to reproduce, prepare DERIVATIVE WORKS, perform publicly and display publicly.

- 12.3 Beginning five (5) years after permission to assert copyright is granted to Sandia by DOE, the GOVERNMENT is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable, worldwide license in SANDIA SOFTWARE to reproduce, prepare DERIVATIVE WORKS, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. Subject to DOE approval, the initial period of five (5) years described in Paragraph 12.2 of this License Agreement, may be extended for successive five (5) year periods. The DOE approval will be based on the standard that SANDIA SOFTWARE remains commercially available, and the market demand is being met.
- 12.4 MARCH-IN RIGHTS: The PARTIES agree and understand that the GOVERNMENT retains "march-in" rights, in accordance with the procedures set forth in 37 CFR 401.6 and any supplemental regulations promulgated by the DOE.
- 12.5 LICENSEE acknowledges that the DOE has audit and inspection rights over all activities conducted at Sandia's location. LICENSEE hereby permits the exercise of such rights in conjunction with LICENSEE's activities which may involve proprietary information disclosed to SANDIA hereunder; provided, however, that any disclosure to DOE is further protected under 18 USC 1905.

Article XIII: Export Control

- 13.1 LICENSEE shall abide by the export control laws and regulations of the United States Department of Commerce and other United States governmental regulations relating to the export of SANDIA SOFTWARE. Failure to obtain an export control license or other authority from the GOVERNMENT may result in criminal liability under U.S. laws.

Article XIV: Controlling Law

- 14.1 This License Agreement is made in Albuquerque, New Mexico, U.S.A., and shall be governed by and construed in accordance with the laws of the State of New Mexico. The PARTIES agree to the exclusive jurisdiction of the courts of New Mexico or the United States District Court for New Mexico.

Article XV: Force Majeure

- 15.1 If either PARTY is prevented from or delayed in carrying out any of the provisions of this License Agreement by reason of any natural disaster, war, accident, labor disturbance, breakdown of plant or equipment, lack or failure of transportation facilities, sources of supply of labor, raw materials, power or supplies, or by reason of any law, order, proclamation, regulation, ordinance, demand or requirement of any government or any subdivision, authority or representative of any such government, the PARTY so prevented or delayed shall be excused from performance to the extent and during the period of such prevention or delay.

Article XVI: Severability

- 16.1 In the event that any one or more of the provisions contained in this License Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this License Agreement, and such clause shall be severed only to the extent such clause is invalid, illegal, or unenforceable.

Article XVII: Entire Agreement

- 17.1 Each PARTY warrants and represents that the execution and delivery of this License Agreement, by SANDIA and LICENSEE, has not been induced by any promises, representations, warranties, or agreements other than those expressed herein. This License Agreement, including Exhibit 1 through Exhibit 10, embodies the entire understanding between Sandia and LICENSEE with respect to the SANDIA SOFTWARE and TECHNICAL ASSISTANCE. This License Agreement supersedes all previous communications, representations, and undertakings, either verbal or written, between SANDIA and LICENSEE with regard to the SANDIA SOFTWARE and TECHNICAL ASSISTANCE.
- 17.2 The Index and Headings used in this License Agreement are for reference purposes only and shall not be used in the interpretation or construction of this License Agreement.
- 17.3 The Exhibits of this License Agreement are incorporated by reference into the Agreement and made a part of the Agreement.

Approved as to Legal Form (December, 2003)

Sandia Corporation:

By: _____
David L. Goldheim

Title: Director, Corporate Business Development
and Partnerships Center

Date: _____

Licensee:

By: _____

Title: _____

Date: _____

Exhibit 1: Licensee

Company

Attention:

Phone:

Fax:

Email:

Reference: Sandia License Number:

Exhibit 2: Reserved

Exhibit 3: Reserved

Reserved

Exhibit 4: Sandia Software

SCR-324

SOAR (Sandia Optimization and Analysis Routines), Ver.4.0
SOAR100 is a suite of problem specific desktop welding software applications to develop optimal automatic weld procedures. Applications provide interactive displays of fusion zone dimensions versus input parameter levels in a weldment. SOAR100 also displays heat affected zones, temperature contours, process efficiencies, and sensitivity parameters, by computing solutions to analytical and/or empirical heat transfer models. SOAR100 provides the student user valuable analysis tools to investigate the impact of changes in weld procedures on weld characteristics. SOAR100 operates via graphical user system input and returns both numerical and graphical output in both electronic hardcopy form. SOAR100 was created to provide students the opportunity to learn a science-based approach to developing optimal automated welding procedures, given a specific set of boundary conditions. In addition, they will be able to see the physical extent of temperature field and several other figures of merit for the weld.

Exhibit 5: Third Party Rights

Reserved

Exhibit 6: Use of Sandia Software

This License Agreement permits LICENSEE to use SANDIA SOFTWARE for internal use only as follows:

Single user class of service: Use limited to one (1) concurrent user.

Exhibit 7: License Fees

LICENSEE shall pay SANDIA a nonrefundable one-time License Fee of ninety-nine dollars (\$99) paid upfront.

This one-time License Fee includes:

- a royalty amount of zero dollars (\$0.00) and
- the amount of ninety-nine dollars (\$99) as reimbursement for Sandia expenses incurred by Principal Investigator Phillip W. Fuerschbach, Org. 9733 (MS 0431, ph. (505) 845-8877, fax (505) 844-1770) for materials and further development of SANDIA SOFTWARE.

Exhibit 8: Technical Assistance

There is no TECHNICAL ASSISTANCE under this License Agreement.

Exhibit 9: Attribution

Should LICENSEE call attention to the use of SANDIA SOFTWARE by LICENSEE, LICENSEE shall indicate that the use of such SANDIA SOFTWARE is under rights and licenses from Sandia National Laboratories. The location, size, and form of the indication shall be such as to provide reasonable attribution to SANDIA.

Exhibit 10: Special Provisions

Reserved